

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

**JOHNNY O. OLIVERIO,
Plaintiff,**

v.

Case No: 3:23cv328

VIRGINIA COMMONWEALTH UNIVERSITY,

and

DR. RAO, President of VCU,

and

**AMY ANDRES, Director and Associate University Librarian
VCU art (VCUart) Qatar Libraries,**

and

**TERESA DOHERTY, MLIS, Student Success Librarian
Defendants.**

NOTICE OF REMOVAL

Defendants, the Virginia Commonwealth University Board of Visitors,¹ Dr. Rao (President of VCU), Amy Andres (Director and Associate University Librarian VCUart Qatar Libraries), and Teresa Doherty (Student Success Librarian) each in their official capacity, by counsel and pursuant to 28 U.S.C. §§ 1331, 1441 and 1446, hereby remove this action from the Circuit Court for the City of Richmond, Virginia to the United States District Court for the Eastern District of Virginia, Richmond Division.

¹ Plaintiff has named Virginia Commonwealth University. The actual entity is “The Board of Visitors of Virginia Commonwealth University.” See Virginia Code §23.1-2300. The entity conducts business as Virginia Commonwealth University (“VCU”).

1. Jurisdiction is vested in this Court pursuant to The Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g (FERPA).

2. Venue is proper in this court because the City of Richmond, Virginia lies within the Eastern District of Virginia, Richmond Division.

3. This civil action commenced in the Circuit Court for the City of Richmond, Virginia, on or about March 28, 2023, with the filing of a Complaint entitled *Johnny O Oliverio v. Virginia Commonwealth University, et. al.*, Case No. CL23-1624-3.

4. Pursuant to 28 U.S.C. § 1446(b), Defendant VCU was served a copy of the Complaint on April 25, 2023.

5. Defendant VCU was served a copy of an Amended Complaint on May 5, 2023.

6. Accordingly, this Notice of Removal has been filed within 30 days after receipt, through service or otherwise, and is timely.

7. Attached hereto, and made a part hereof, is a copy of the Complaint filed in the Circuit Court and served on VCU. *See **Exhibit A***.

8. Attached hereto, and made a part hereof, is a copy of the Amended Complaint filed in the Circuit Court and served on VCU. *See **Exhibit B***.

9. As set forth in the Complaint, Plaintiff has brought purported allegations against Defendants VCU, Rao, Andres and Doherty arising under FERPA.

10. The above-styled action is a civil action that involves a federal question over which this Court has original jurisdiction pursuant to 28 U.S.C. § 1331, as this action involves claims arising out of the Constitution, laws and/or treaties of the United States.

11. All defendants who have been properly joined and served join in or consent to the removal of the action to federal court, as required by 28 U.S.C. § 1446(b)(2)(A).²

12. This matter is therefore removable to federal court.

13. A Notice of Filing of Notice of Removal is being filed contemporaneously with the Clerk of the Circuit Court for the City of Richmond, Virginia. A copy of the Notice of Filing of Notice of Removal is attached as **Exhibit C**.

WHEREFORE, the Virginia Commonwealth University Board of Visitors hereby request that this action be removed to this Court.

Respectfully Submitted,
**Virginia Commonwealth University,
Dr. Rao in his official capacity,
Amy Andres in her official capacity, and
Teresa Doherty in her official capacity**

By: /s/
G. William Norris, Jr. (VSB No.: 41754)
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² To date, the Individual Defendants have not been served with either the original Complaint or the Amended Complaint. However, VCU is filing this Motion to Dismiss on the official capacity claims against the Individual Defendants because “a suit against a state official in his or her official capacity is not a suit against the official but rather is a suit against the official's office.” *Brandon v. Holt*, U.S. 464, 471 (1985); *Herron v. Va. Commonwealth Univ.*, 366 F. Supp. 2d 355, 363-64 (E.D. Va. 2004).

